

The purpose of this paper is to set out for members of the Working Party the main suggestions for amendment to the law relating to terrorism that have been made over the last year or so. The subject is dealt with under the following headings:-

- A The Law relating to membership of proscribed organisations
- B The Offence of Terrorism
- C The Law of Conspiracy
- D The Right to Silence
- E The Law of Evidence and the burden of proof
- F Miscellaneous suggestions.

The paper does not purport to set out the full case for and against the various proposals, but in most cases it briefly explains some of the points that have previously been made about them. In this context it is important to note that we should be prepared to reconsider ideas that may have been rejected in the past. References to the RUC paper relate to the document which is being circulated with this one. It is suggested that in considering the proposals the following factors (not all of them consistent with one another) be taken into account, although it is for consideration how much weight should be attached to each:-

- (i) will there be an increase in the number of convictions? - if so, will the changes hit the Godfathers, the active terrorists, or just those who support terrorism without becoming actively involved?
- (ii) will the proposals inhibit the activities of terrorist organisations?

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(iii) the effect on Loyalist opinion and the law and order lobby of being seen to do something;

(iv) the danger of taking action which might be seen to bear unfairly on one section of the community;

(v) the danger of taking cosmetic action which will eventually be seen to have no real effect;

(vi) the need for adequate legal safeguards for the defence in order to ensure that the innocent are not wrongly convicted;

(vii) the need, so far as is possible, to avoid lowering the accepted standards of the legal system;

(viii) the effect of the proposals on opinion generally, and in particular the human rights lobby (note the views of SACHR on the Emergency Provisions Act).

THE LAW RELATING TO MEMBERSHIP OF PROSCRIBED ORGANISATIONS

Section 21 of the Northern Ireland (Emergency Provisions) Act 1978 makes it an offence to belong or profess to belong to a proscribed organisation, to solicit financial support for such an organisation or to encourage others to become members or work on behalf of such organisations. At subsection 6, it states that the possession of documents relating to a proscribed organisation shall be evidence of membership. Under section 25 of the Act, it is an offence to dress or behave in such a way as to arouse reasonable apprehension on the part of others that the perpetrator is a member of a proscribed organisation. (Part 1 of the Prevention of Terrorism (Temporary Provisions) Act 1976, which also concerns proscribed organisations, does not apply in Northern Ireland).

There have been a number of important cases where the RUC have not been successful in sustaining membership charges, even though they have been certain of the involvement of the people concerned with proscribed organisations. The "Gerry Adams" and "PSF" cases spring to mind (see RUC paper for details of these cases). Given that confessions are unlikely to be forthcoming in such cases, the main difficulty lies in adducing evidence that would satisfy a Court of membership. The RUC's response has been to suggest a number of legislative changes, most of them aimed at increasing the number of activities which the Courts would be required to accept as evidence of membership. There are some variations on this theme which include casting the onus of proof onto the accused where there is evidence that he has behaved in a certain way and making certain activities associated with membership offences in themselves.

The main thrust of the argument has been to go for guilt by association and inference; that is by specifying activities from which it could be inferred that someone is a member of an organisation or from which it appears that he is associated with ^{its} members. The danger with this approach is that it might put non-members at risk of prosecution; the counter argument of this is that in the special circumstances applying in Northern Ireland, it should be incumbent upon law-abiding people to steer clear of places and activities

which a reasonable person might associate with terrorist organisations - on the other hand we would not wish to inhibit legitimate political expression.

Suggested changes of the law relating to membership can be examined against the yardstick of making it easier for the police to prosecute members of proscribed organisations, while not putting non-members at risk. The suggestions that have been made are as follows:-

1. it should be an offence for anyone to promote or advance the objects of a proscribed organisation (an extension to section 21(1)(b) of the EPA); also an offence for any person habitually to frequent premises where the objects of a proscribed organisation are advanced or promoted.

A fundamental objection to this proposal is that the objects of proscribed organisations can be shared by other bodies which are not and should not be proscribed. It is the means by which PIRA and the UVF seek to achieve their ends that distinguish them from other legal entities, not the ends in themselves. It would not take us any further to alter the wording to make it an offence to promote or advance terrorism in furtherance of the objects of a proscribed organisation as that is already covered by section 21(1)(c). Also under the suggested formulation, it would be an offence to drink in a public house where, unknown to the drinker, the Provisional IRA meet to plan their activities; this would hardly be acceptable.

2. the fact that a person dresses or behaves in such a way as to create a reasonable inference that he is a member of a proscribed organisation, should be prima facie evidence of membership of that organisation, the burden of proof being placed on the accused to disprove the proposition.

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This would mean that anyone in breach of section 25 of the EPA could also be convicted under section 21 unless he were in a position to prove that he was not a member of a proscribed organisation. Section 21 attracts higher maximum penalties than section 25. It is likely to bear more upon those on the periphery of proscribed organisations than on the leaders, and in any event the judiciary might well choose to mete out sentences in respect of membership, in cases brought in this way, no higher than they would in respect of those convicted solely under section 25. A legislative device of this sort would probably meet with considerable opposition without securing significant counter-balancing advantages. Furthermore, there would be obvious difficulties for a defendant, in seeking to prove that he was not a member of an organisation. (See RUC paper.)

3. Any statement, made orally, in writing or otherwise, or any conduct by an accused person implying or leading to a reasonable inference that he had in his possession information which came directly from a proscribed organisation should be prima facie evidence of his membership of that organisation and the onus to prove that he was not a member should lie on him.

As it stands, this offence would put at peril journalists and innocent people who receive bomb warnings. (But see RUC paper.)

4. An offence for anyone to promote or advance the activities or cause pursued by a proscribed organisation.

To make it an offence to pursue the cause pursued by a proscribed organisation, is open to the same objections as at (i) above. However, if the offence were limited to pursuance of "activities", then it would be more acceptable; indeed it might constitute a useful extension of section 21 of the EPA. (See RUC paper.)

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5. Other activities which it has been suggested should be regarded as evidence of membership, with the burden of proof placed on the accused.

(a) Organising, controlling or otherwise assisting in the conduct or progress of any parade, demonstration or meeting at which any person or persons are dressed or behave in such a way as to arouse reasonable apprehension that they are members of a proscribed organisation.

It is already an offence (S.25 of 1978 EPA) to dress or behave in such a way as to arouse reasonable apprehension of membership. But if it becomes an offence to assist in organising a parade, etc., at which persons dressing or behaving in this way are present, are we not back into the ends/means dilemma? Thus all who attend Easter parades are ^{Republicans} and some Republicans who are also Provisionals attend them in berets and dark glasses. But are the organisers of the parade guilty of supporting PIRA, or simply the aim of a united Ireland? Under this formulation the organisers of an official unionist meeting, attended by a couple of uninvited persons in black berets might find themselves being prosecuted for membership of the UVF. Moreover, in practice there seem to be great difficulties even in arresting the "colour parties" of such parades who are clearly breaking the existing law.

(b) Knowingly addressing or otherwise conducting, organising, facilitating or otherwise taking part in the address of any assembly or concourse of persons in order to promote, solicit or invite financial or other support for a proscribed organisation its membership or activities.

This is partly covered by existing law, especially in respect of financial support (S.21 EPA, S.10 PTA).

- (c) Knowingly publishing, distributing, broadcasting or displaying or otherwise assisting in the said activities, of any written or oral statement which promotes, solicits or invites financial or other support for any proscribed organisation its members or its activities.

This would presumably catch both the printers, etc. of e.g., An Phoblacht, and possibly also journalists and television reporters. Again the phrase "support for any proscribed organisation" rather begs the question of what precisely you would have to be supporting. This would be controversial and would not significantly inhibit terrorist organisers or activists.

- (d) Otherwise acting in a manner which arouses the reasonable apprehension that he is the medium through which a proscribed organisation or any of its members is publishing, distributing, broadcasting or displaying either orally or in writing any statement, on or account of, its activities or those of its membership.

It is by no means clear what would justify a "reasonable apprehension" that this rather peculiar offence had been committed. The "medium" idea is presumably designed to catch the people who telex PIRA press statements from 170 Falls Road to the BBC, etc. But would it not also catch other links in the chain - the BBC copytaker, the news editor, etc? This difficulty inevitably occurs if we seek to rely on circumstantial proof and eliminate intent. Again, we would not be striking at the real perpetrators of terrorism.

6. Section 1 of the Prevention of Terrorism Act applies only to GB. Section 1(1)(a) and (b) reproduces the wording of Section 21 (a) and (b) of the Emergency Provisions Act, but there is no provision applying in Northern Ireland which equates to Section 1(1)(c) of the PTA which provides:-

"..... if any person arranges or assists in the arrangement or management of, or addresses, any meeting of three or more persons (whether or not it is a meeting to which the public are admitted) knowing that the meeting is to support or to further the activities of, a proscribed organisation, or is to be addressed by a person belonging to a proscribed organisation, he shall be liable"

It is for consideration whether this provision should apply in Northern Ireland; it is wider than the suggestion at 5(b) above and could be a useful addition to the law. It is in any event illogical that there should be an offence relating to terrorism in GB that does not apply in Northern Ireland. It would, of course, require primary legislation.